

REMARKS

5-68219/93

Claims 31-55 are pending in this application. Claims 31-55 were rejected under 35 U.S.C. § 103.

By this amendment, claims 44-50 and 52-54 have been canceled, claims 31, 36, and 51 have been amended and new claims 56 and 57 have been added without prejudice or disclaimer of any previously claimed subject matter. Support for the amendments can be found, *inter alia*, throughout the specification, for example in Examples at pages 7 and 17. Support for new claims can be found in the specification, for example, at page 2, lines 25-34. The amendments and new claims involve subject matter already under examination. Accordingly, Applicants respectfully request entry of this amendment.

The amendments are made solely to promote prosecution without prejudice or disclaimer of any previously claimed subject matter. With respect to all amendments and cancelled claims, Applicants have not dedicated or abandoned any unclaimed subject matter and moreover have not acquiesced to any rejections and/or objections made by the Patent Office. Applicants expressly reserve the right to pursue prosecution of any presently excluded subject matter or claim embodiments in one or more future continuation and/or divisional application(s).

Applicants have carefully considered the points raised in the Office Action and believe that the Examiner's concerns have been addressed as described herein, thereby placing this case into condition for allowance.

Finality of the Office Action

The Examiner states that "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, this action is made final. See MPEP §706.07(a)." Office Action, page 4. Applicants respectfully disagree with the determination of finality for the Office Action.

The currently pending independent claims were all dependent claims rewritten as independent in the response and amendment filed March 4, 2004. These dependent claims had not been subject to the current rejection. Thus, Applicants respectfully submit that the outstanding rejection in the Final Office Action is a new ground of rejection that was neither necessitated by Applicants' amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. §1.97(c). As such, the pending claims should not be subject to a final Office Action. M.P.E.P. §706.07(a).

Accordingly, Applicants respectfully request withdrawal of the finality of the Office Action.

Rejection under 35 U.S.C. §103

Claims 31-55 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Lavanchy, *et al.* (1996, *J. Clinical Laboratory Analysis* 10(5):269-276, "Lavanchy"), Lee, *et al.* (1995, *Transfusion* 35:845-849, "Lee") Rosa, *et al.*, (1995, *J. Virol. Methods* 55:219-232, "Rosa"), and Wang *et al.* (U.S. Pat. No. 5,106,726, "Wang"). Applicants respectfully traverse this rejection.

As an initial matter, the Lavanchy reference was published in the fifth of the six issues of *J. Clinical Laboratory Analysis* in 1996 and the publication date of that issue was September 2, 1996. Applicants respectfully point out that the present invention claims priority to May 7, 1996, the filing date of Japanese Patent Application No. 8-112442. Thus, Lavanchy is not a citable reference under 35 U.S.C. §102 and so is not available for this rejection. Accordingly, Applicants will not respond further to this citation.

A *prima facie* case of obviousness requires that three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable

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